

S P E E C H

OF

HON. JOHN M. BROOMALL,
OF PENNSYLVANIA,

ON

THE CIVIL RIGHTS BILL;

DELIVERED IN THE HOUSE OF REPRESENTATIVES, MARCH 8, 1866.

RIGHTS OF CITIZENS.

The House having under consideration the bill to protect all persons in the United States in their civil rights and to furnish the means for their vindication—

Mr. BROOMALL said:

Mr. SPEAKER: In some remarks which I had the honor to offer in the House a few weeks ago, I said that "the Government of the United States, above all other duties, owes it to itself and to humanity to guard the rights of those who in the midst of rebellion periled their lives and fortunes for its honor, of whatever east or lineage they be," and "that no system of reconstruction ought to be considered unless it shall effectually guarantee the rights of the Union men of the South."

Everything that has transpired since then, from all departments of the Government, satisfies me that these, our Southern allies in the war waged to preserve the existence of the nation, have nothing to trust to except the integrity and firmness of the Union majority in the two Houses of Congress. That majority, through its appropriate committees, presents the bill under consideration as one of the measures on which it relies to carry out its great and patriotic purpose.

The object of the bill is two-fold—to declare who are citizens of the United States, and to secure them the protection which every Government owes to its citizens. It will hardly be said that these are not proper subjects of legislation, and especially the latter one. If the same thing has not been attempted before, it was partly because there never before was the same necessity, and partly because of the long continued and remarkable forbearance of those for whom what necessity there was existed.

The first provision of the bill declares that all persons born in the United States and not subject to any foreign Power are citizens of the United States. As a positive enactment this would hardly seem necessary. Even as a declaration of existing law, a proposition that at most can only be said to embrace the true meaning of the word "citizen" would seem to find its more appropriate place in the elementary treatises upon

law rather than upon the statute-books. What is a citizen but a human being who by reason of his being born within the jurisdiction of a Government owes allegiance to that Government?

But modern Democratic political science discovered and promulgated the dogma that this is the country of the white man, and that no other man has rights here which the white man is bound to respect. When, therefore, this peculiar science culminated in an attempt to overthrow the Government, and was itself overthrown, it is as well that a return to the principles of the founders of the Government should be made manifest to future generations by a declaration upon the statute-books.

The objection to this part of the bill is that it calls the negro a citizen. And what should it not? Civilized man must of necessity be a citizen somewhere. He must owe allegiance to some Government. There is some spot upon the earth's surface upon which it is possible for him to commit treason. Now, the negro in America is civilized. Ask the minister of religion where he finds the most sincere devotion, the school-teacher where he finds the greatest desire to learn. Ask the very Southern rebel, whose representatives are most earnest against this bill, where he found the most implicit and unquestioning obedience to law and order under circumstances hardly justifying the hope of obedience to law and order.

The American negro is civilized, and of necessity must owe allegiance somewhere. And until the opponents of this measure can point to the foreign Power to which he is subject, the African potentate to whom after five generations of absence he still owes allegiance, I will assume him to be, what the bill calls him, a citizen of the country in which he was born.

Let those who say with the air of such omnipotent authority that this is the country of the white man, explain how it happened that the Ruler of the universe suffered it to be occupied by the red man for countless ages of the past. And then let them say, if they know, whether it may not be His purpose to suffer some small portion of it to be occupied by the black man for countless ages of the future. No, our country is the country of its inhabitants. Our Government is the Government of the governed.

But there is another class of persons born within the limits of the United States whose status requires fixing by legislation. I allude to those who took upon themselves the responsibilities and duties of allegiance to another power; who foreswore their citizenship and allegiance. There is nothing in our form of government, nothing in our institutions that contradicts the right of expatriation. True, the right is not anywhere expressly granted, but our naturalization laws are founded upon the idea that such right is inherent in man, and I believe this is true.

Most certainly if the confederation had sustained itself its citizens would have ceased to be citizens of the United States, and by a process that would have related back to the very commencement of the rebellion. Now, the fact that it did not sustain itself was the result of no merit of these men. They did all they could to succeed. As far as intention is concerned their condition of expatriation is complete. Why may not the Government take them at their word and assume that the position they took upon themselves is their true one, that they are no longer entitled to the benefits of the allegiance they foreswore? Why may they not be estopped from contradicting their own oaths, from pleading their own crime? If they are citizens they have forfeited their lives to the outraged laws of their country; out of humanity, then, why may we not hold them to have lost that dangerous characteristic?

Look at the question in another point of view. By the doctrine laid down by all the writers upon public law, so clearly expressed by the Supreme Court in the prize cases, *2 Black, 674*, in civil wars the belligerent that claims sovereign rights may in all cases elect between the civil law and the laws of war, may treat its opponents either as citizens or public enemies, may hang for treason or hold as prisoners of war. The unavoidable consequence of this doctrine is that if that belligerent shall be the victor, the question of the citizenship of its opponents is for it to decide.

If I am right in all this, then it is for the Government to elect whether or not it will hereafter treat the rebels as citizens or banish them as alien enemies. Now, if this were the mere decision of a right, it would be within the province of the courts of justice; if it were the announcement of a great fact, the Executive might do it; but being the exercise of a discretion, and the granting or withholding of a favor, nothing but the supreme law-making power can perform the function.

A question might naturally arise whether we ought again to trust those who have once betrayed us; whether we ought to give them the benefits of a compact they have once repudiated. Yet the spirit of forgiveness is so inherent in the American bosom

that no party in the country proposes to withhold from these people the advantages of citizenship; and this is saying much. With a debt that may require centuries to pay, with so many living and mutilated witnesses of the horrors of war, with so many saddened homes, so many of the widowed and fatherless pleading for justice, for retribution, if not revenge, it speaks well for the cause of Christian civilization in America that no party in the country proposes to deprive the authors of such immeasurable calamity of the advantages of citizenship.

But the election must be made. Some public legislative act is necessary to show the world that those who have forfeited all claims upon the Government are not to be held to the strict rigor of the law of their own invoking, the decision of the tribunal of their own choosing; that they are to be welcomed back as the prodigal son whenever they are ready to return as the prodigal son.

The act under consideration makes that election. Its terms embrace the late rebels, and it gives them the rights, privileges, and immunities of citizens of the United States, though it does not propose to exempt them from punishment for their past crimes.

But it is said by the minority in this body that we have no right under the Constitution to pass the law; that the General Government was never intended to be intrusted with the power to protect individual persons; that was to be left to the States. What, then, does the preamble mean? An ordinary reader would look there for the object and intent of the document:

"We the people of the United States, in order to form a more perfect union, establish Justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

This certainly has the appearance of being designed to protect the rights of individuals within as well as beyond the jurisdiction of the Government. Yet, strange as it may seem, while the Government has been always held competent to protect its meanest citizen within the domain of any European potentate, it has been considered powerless to guard the citizen of Pennsylvania against the illegal arrest, under color of State law, of the most subordinate officer of the most obscure municipality in Virginia. Strange as it may seem, while the Government of the United States has been held competent to protect the lowest menial of the minister of the most obscure prince in Europe, anywhere between the two oceans, and from the Lakes to the Gulf, it had no power to protect the personal liberty of the agent of the State of Massachusetts in the city of Charleston, or to enable him to sue in the State courts.

If the Government has not the power, by appropriate legislation, to protect its citizens within as well as without its jurisdiction, I would like to know what the eighth section of the first article of the Constitution means when it empowers Congress to provide for the general welfare of the United States, and when it empowers Congress to pass all laws necessary for that purpose. Does it not pertain to the "general welfare" that "the citizens of each State," in the language of the second section of the fourth article of that instrument, "shall be entitled to all privileges and immunities of citizens in the several States?"

But throwing aside the letter of the Constitution, there are characteristics of Governments that belong to them as such, without which they would cease to be Governments. The rights and duties of allegiance and protection are corresponding rights and duties. Upon whatever square foot of the earth's surface I owe allegiance to my country, there it owes me protection, and wherever my Government owes me no protection I owe it no allegiance and can commit no treason. In the very nature of things this position is incapable of being overthrown, and while it stands, it demonstrates not only the right, but the duty to protect American citizens by appropriate legislation.

An unexpected argument has been adduced by the leader of the Opposition in this body. [Mr. ROGERS,] that this bill will permit the negro to vote in the several States of the Union. It is rather ludicrous than otherwise that the committee having it in charge have agreed to put in a provision to quiet the alarm of the opposite party. I am willing to concede of late, that if the Democrats are to be kept above the negroes in the social scale there must be some discriminating legislation in their favor. I used to think the white man a better man than the negro, but an experience of three winters south of Mason and Dixon's line has partly satisfied me that this depends somewhat upon the white man's politics.

Does not the gentleman from New Jersey [Mr. ROGERS] know that the Constitution of the United States fixes the qualification of voters among its citizens? Does he not know that without a change of that instrument Congress cannot extend the right of suf-

frage in the States? The bill declares women and children citizens, yet it did not occur to the gentleman that this might make them electors.

Let me now ask our opponents upon this floor, and in other departments of the Government, how they propose to protect the citizens of the United States within the domain of the United States. They will surely not deny the duty. They will not say that we have a Government for the purpose of allegiance, and for the punishment of treason, but none for the protection of the citizen.

Will they say that the rights of citizens of the United States can be safely intrusted to the governments of the several States? If this were true, it might afford some excuse for neglecting to provide the appropriate legislation, but none for refusing it. But it is not true. For thirty years prior to 1860, everybody knows that the rights and immunities of citizens were habitually and systematically denied in certain States to the citizens of other States: the right of speech, the right of transit, the right of domicile, the right to sue, the writ of *habeas corpus*, and the right of petition. It will be said that this state of things was owing to the existence of what we politely called "the peculiar institution," but will it be said that with the disappearance of the peculiar institution this state of things also disappeared?

Within the jurisdiction of the United States there never was a time when more black freemen, citizens of the United States, were enslaved without even the color of law, and denied the right to process of law to test the validity of the claim of those who pretend to own them. There never was a time when more black freemen, citizens of the United States, were kidnapped and sold into other countries against positive law, and yet denied the process of law to enforce the right and to avenge the wrong.

But the opponents of this bill have one answer to all appeals for justice against this species of wrong—an answer furnished from the political speeches of the judges of the Supreme Court of the United States on the occasion of their assembling to celebrate the election of James Buchanan, called in mockery their decision in the Dred Scott case: "A negro has no rights which a white man is bound to respect."

As my object is to satisfy our political opponents of the political necessity of the pending measure, I choose to admit the force of this answer. Yet I might say with truth that American statesmanship could go no further in that direction; that even Democracy could assume no meaner position. But are the evils complained of limited to the black man? While I would blush if I could admit that that fact, if acknowledged, would in any degree lessen the necessity for the passage of this law, I nevertheless maintain and hold myself ready to prove that white men, citizens of the United States, have been, and are now being punished under color of State laws for refusing to commit treason against the United States at the bidding of Democratic candidates for the Presidency; that white men, soldiers of the Republic, have been arraigned in State courts, under State laws, for the crime of shooting down traitors on the field of battle by the command of their military superiors, and only saved from being hanged, on conviction of murder, by the interposition of that branch of the military forces of the Government known as the Freedmen's Bureau. I maintain further, that white men, citizens of the United States, have been driven from their homes, and have had their lands confiscated in State courts, under State laws, for the crime of loyalty to their country, and that now they are begging in vain for a redress of wrongs in the courts of the reconstructed South.

Our political opponents will not deny these allegations. They are fully conscious of the state of things existing at the South. They know that there loyalty is the crime and treason the virtue; not throughout the entire country, because there are honorable exceptions, but throughout more than half of the eleven States lately in rebellion. The very fact that the President of the United States, armed with the war power, is now annulling legislative enactments in those States, quashing the decrees of courts, and standing guard over the rights of the loyal people, is conclusive proof, binding upon the entire Democratic party, that citizens of the United States need the protection of their Government in the several States of the Union.

Mr. Speaker, it is alleged that this species of legislation will widen the breach existing between the two sections of the country, will offend our southern brethren. Do not gentlemen know that those who are most earnestly asking this legislation are our southern brethren themselves? They are imploring us to protect them against the conquered enemies of the country, who, notwithstanding their surrender, have managed, through their skill or our weakness, to seize nearly all the conquered territory. This is not the first instance in the world's history in which all that had been gained by hard fighting was lost by bad diplomacy.

But they, whose feelings are entitled to so much consideration in the estimation of

those who urge this argument, are not our southern brethren, but the southern brethren of our political opponents; the conquered rebels, pardoned and unpardoned; traitors priding themselves upon their treason.

These people are fastidious. The ordinary terms of the English language must be perverted to suit their tastes. Though they surrendered in open and public war, they are not to be treated as prisoners. Though beaten in the last ditch of the last fortification, they are not to be called a conquered people. The decision of the forum of their own choosing is to be explained away into meaningless formality for their benefit. Though guilty of treason, murder, arson, and all the crimes in the calendar, they are "our southern brethren." The entire decalogue must be suspended lest it should offend these polished candidates for the contempt and execration of posterity.

Out of deference to the feelings of these sensitive gentlemen, an executive construction must be given to the word "loyalty," so that it shall embrace men who only are not hanged because they have been pardoned, and who only did not destroy the Government because they could not. Out of deference to the feelings of these sensitive gentlemen, too, a distinguished public functionary, once the champion of the rights of man, a leader in the cause of human progress, a statesman whose keen foreknowledge could point out the "irrepressible conflict between slavery and freedom," cannot now see that treason and loyalty are uncompromising antagonisms.

It is charged against us that the wheels of Government are stopped by our refusal to admit the representatives of these southern communities. When we complain that Europe is underselling us in our own markets, and demand protection for the American laborer, we are told to "admit the southern Senators and Representatives." When we complain that excessive importations are impoverishing the country and rapidly bringing on financial ruin, we are told to "admit the southern Senators and Representatives." When we complain that an inflated currency is making the rich richer and the poor poorer, keeping the prices of even the necessities of life beyond the reach of widows and orphans who are living upon fixed incomes, the stereotyped answer comes, "Admit the southern Senators and Representatives." When we demand a tax upon cotton to defray the enormous outlay made in dethroning that usurping "king of the world," still the answer comes, and the executive parrots everywhere repeat it, "Admit the southern Senators and Representatives."

The mind of the man who can see in that prescription a remedy for all political and social diseases must be curiously constituted. Would these Senators and Representatives vote a tax upon cotton? Would they protect American industry by increasing duties. Would they prevent excessive importations? To believe this requires as unquestioning a faith as to believe in the sudden conversion of whole communities from treason to loyalty.

We are blocking the wheels of Government! Why, the Government has managed to get along for four years, not only without the aid of the southern Senators and Representatives, but against their efforts to destroy it; and in the mean time has crushed a rebellion that would have destroyed any other Government under heaven. Surely the nation can do without the services of these men, at least during the time required to examine their claims and to protect by appropriate legislation *our* southern brethren. None but a Democrat would think of consulting the wolf about what safeguard should be thrown around the flock.

Those who advocate the admission of the Senators and Representatives from the States lately reclaimed from the rebellion, as a means of protecting the loyal men in those States, and as a substitute for the system of legislation of which this bill is part, well know that the majority in both Houses of Congress ardently desire the full recognition of those States, and only ask that the rights and interests of the truly loyal men in those States shall be first satisfactorily secured.

Much useless controversy has been had about the legal *status* of those States. There is no difference between the two parties of the country on that point. The actual point of difference is this: the Democrats affiliate with their old political friends in the South, the late rebels, the friends and followers of Breckinridge, Lee, and Davis. The Union majority, on the other hand, naturally affiliate with the loyal men in the South, the men who have always supported the Government against Breckinridge, Lee, and Davis. Each party wants the South reconstructed in the hands of its own "Southern brethren."

In short, the Northern party corresponding with the loyal men of the South ask that the legitimate results of Grant's victory shall be carried out, while the Northern party corresponding with the rebels of the South ask that things should be considered as if

Lee had been the conqueror, or at least as if there had been a drawn battle, without victory on either side.

This brings the rights of those in whose behalf the opponents of the bill under consideration are acting directly in question, and in order to limit down the field of controversy as far as possible, let us inquire how far all parties agree upon the legal *status* of the communities lately in rebellion. Now, the meanest of all controversies is that which comes from dialectics. Where the disputants attach different meanings to the same word their time is worse than thrown away. I have always looked upon the question whether the States are in or out of the Union as only worthy of the schoolmen of the middle ages, who could write volumes upon a mere verbal quibble. The disputants would agree if they were compelled to use the word "State" in the same sense. I will endeavor to avoid this trifling.

All parties agree that at the close of the rebellion the people of North Carolina, for example, had been "deprived of all civil government." The President, in his proclamation of May 29, 1865, tells the people of North Carolina this in so many words, and he tells the people of the other rebel States the same thing in his several proclamations to them. This concludes the Conservatives and Democrats, who, however they may disagree, at least agree in this, that the President shall do their thinking.

The Republicans subscribe to this doctrine, though they differ in their modes of expressing it. Some say that those States have ceased to possess any of the rights and powers of government as States of the Union. Others say, with the late lamented President, that "those States are out of practical relations with the Government." Others hold that the State organizations are out of the Union. And still others that the rebels are conquered, and therefore that their organizations are at the will of the conqueror. The President has hit upon a mode of expression which embraces concisely all these ideas. He says that the people of those States were, by the progress of the rebellion and by its termination, "deprived of all civil government."

One step further. All parties agree that the people of these States, being thus disorganized for all State purposes, are still, at the election of the Government, citizens of the United States, and as such, as far as they have not been disqualified by treason, ought to be allowed to form their own State governments, subject to the requirements of the Constitution of the United States.

Still one step further. All parties agree that this cannot be done by mere unauthorized congregations of the people, but that the time, place, and manner must be prescribed by some department of the Government, according to the argument of Mr. Webster and the spirit of the decision of the Supreme Court in *Luther vs. Borden*, 7 Howard, page 1.

Yet another step in the series of propositions. All parties agree that as Congress was not in session at the close of the rebellion, the President, as Commander-in-Chief, was bound to take possession of the conquered country and establish such government as was necessary.

Thus far all is harmonious; but now the divergence begins. At the commencement of the present session of Congress three-fourths of both Houses held that when the people of States are "deprived of all civil government," and when, therefore, it becomes necessary to prescribe the time, place, and manner in and by which they shall organize themselves again into States, while the President may take temporary measures, yet only the law-making power of the Government is competent to the full accomplishment of the task. In other words, that only Congress can enable citizens of the United States to create States. I have said that at the commencement of the session three-fourths of both Houses held this opinion. The proportion is smaller now and by a judicious use of executive patronage it may become still smaller; but the truth of the proposition will not be affected if every Representative and Senator should be manipulated into denying it.

On the other hand, the remaining fourth, composed of the supple Democracy and its accessions, maintain that this State-creating power is vested in the President alone, and that he has already exercised it.

The holy horror with which our opponents affect to contemplate the doctrine of destruction of States is that much political hypocrisy. Every man who asks the recognition of the existing local governments in the South thereby commits himself to that doctrine. The only possible claim that can be set up in favor of the existing governments is based upon the theory that the old ones have been destroyed. The present organizations sprang up at the bidding of the President after the conquest among a people who, he said, had been "deprived of all civil government."

If the President's "experiment had resulted in organizing the southern communities

in loyal hands, the majority in Congress would have found no difficulty in endorsing it and giving it the necessary efficiency by legislative enactment. In this case, too, the President never would have denied the power of Congress in the premises. He never would have set up the theory that the citizens of the United States, through their representatives, are not to be consulted when those who have once broken faith with them ask to have the compact renewed.

Our opponents have no love for the President. They called him a usurper and a tyrant in Tennessee. They ridiculed him as the negro "Moses." They tried to kill him, and failing in that, they accused him of being privy to the murder of his predecessor. But when his "experiment" at reconstruction was found to result in favor of their friends, the rebels, then they hung themselves about his neck like so many millstones, and tried to damn him to eternal infamy by indorsing his policy. Will they succeed? Will he shake them off, or go down with them?

But let us suffer these discordant elements to settle their own terms of combination as best as they may. The final result cannot be doubtful. If ten righteous men were needed to save Sodom, even Andrew Johnson will find it impossible to save the Democratic party.

Our path of duty is plain before us. Let us pass this bill and such others as may be necessary to secure protection to the loyal men of the South. If our political opponents thwart our purposes in this, let us go to the country upon that issue.

I am by no means an advocate of extensive punishment, either in the way of hanging or confiscation, though some of both might be salutary. I do not ask that full retribution be enforced against those who have so grievously sinned. I am willing to make forgiveness the rule and punishment the exception; yet I have my *ultimatum*. I might excuse the pardon of the traitors Lee and Davis, even after the hanging of Wirz, who but obeyed their orders, orders which he would have been shot for disobeying. I might excuse the sparing of the master after killing the dog whose bite but carried with it the venom engendered in the master's soul. I might look calmly upon a constituency ground down by taxation, and tell the complainants that they have neither remedy nor hope of vengeance upon the authors of their wrongs. I might agree to turn un pityingly from the mother whose son fell in the Wilderness, and the widow whose husband was starved at Andersonville, and tell them that in the nature of things retributive justice is denied them, and that the murderers of their kindred may yet sit in the councils of their country; yet even I have my *ultimatum*. I might consent that the glorious deeds of the last five years should be blotted from the country's history; that the trophies won on a hundred battle-fields, the sublime visible evidences of the heroic devotion of America's citizen soldiery, should be burned on the altar of reconciliation. I might consent that the cemetery at Gettysburg should be razed to the ground; that its soil should be submitted to the plow, and that the lamentation of the bereaved should give place to the lowing of cattle. But there is a point beyond which I will neither be forced nor persuaded. I will never consent that the Government shall desert its allies in the South, and surrender their rights and interests to the enemy, and in this I will make no distinction of caste or color, either among friends or foes.

The people of the South were not all traitors. Among them were knees that never bowed to the Baal of secession, lips that never kissed his image. Among the fastnesses of the mountains, in the rural districts, far from the contagion of political centers, the fires of patriotism still burned, sometimes in the higher walks of life, oftener in obscure hamlets, and still oftener under skins of men as black as the hearts of those who claimed to own them.

These people devoted all they had to their country. The homes of some have been confiscated, and they are now fugitives from the scenes that gladdened their childhood. Some were cast into dungeons for refusing to fire upon their country's flag, and still others bear the marks of stripes inflicted for giving bread and water to the weary soldier of the Republic, and aiding the fugitives to escape the penalty of disloyalty to treason. If the God of nations listened to the prayers that ascended from so many altars during those eventful years, it was to the prayers of these people.

Sir, we talked of patriotism in our happy northern homes, and claimed credit for the part we acted; but if the history of these people shall ever be written, it will make us blush that we ever professed to love our country.

The Government now stands guard over the lives and fortunes of these people. They are imploring us not to yield them up without condition to those into whose hands recent events have committed the destinies of the unfortunate South. A nation which could thus withdraw its protection from such allies, at such a time, without their full and free consent, could neither hope for the approval of mankind nor the blessing of heaven.